

**A Status Report
to the Washington State Legislature**

Implementation of Washington's New Primary

**by
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Washington
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I. Introduction

Washington State will be implementing a new primary on September 14, 2004 pursuant to legislation passed by the 2004 Legislature and signed into law by Governor Locke earlier this year.

The Office of Secretary of State has developed this status report to advise members of the Legislature on recent events relating to the primary.

To prepare Washington for this important election, the Office of Secretary of State is working in close partnership with the County Auditors on two critical challenges: (1) preparing to conduct a completely new style of primary and (2) educating Washington voters how to properly vote this primary.

What follows is a summary of the key events that have occurred on the primary since the legislative session.

II. Litigation/Initiative/Referendum Recap

Grange Challenge to Governor's Veto. Following the Governor's veto of the "top two" portion of the bill passed by the Legislature, the Washington State Grange initiated an original action in the state Supreme Court challenging the veto. The Supreme Court held argument on June 10, 2004 on the case. The next day, on June 11, 2004, the Court issued a short one line order denying the Grange appeal. The effect of this ruling is that the "Montana" style open primary resulting from the Governor's veto will be implemented this fall in Washington.

Primary Referendum. Also following the Governor's veto, a referendum was filed with the Secretary of State to refer the primary legislation to a vote of the people. The referendum sponsor did not submit signatures by the required deadline so the referendum will not proceed to the general election.

Referendum Litigation. Following acceptance by the Secretary of State of the Referendum, the Governor filed a lawsuit against the Secretary of State. The lawsuit challenged the Secretary's authority to accept the referendum based upon the state constitution. The state constitution provides that a referendum may not be filed on legislation "necessary for the immediate preservation of the public peace, health or safety, or support of the state government." The State Supreme Court dismissed this lawsuit as "moot" after the referendum failed for lack of signatures.

Grange “Top Two” Initiative. The Grange filed its initiative for a “top two” primary on the July 2, 2004 deadline with over 300,000 signatures. Just last week, our office certified the signatures on this initiative so the measure will appear on the November ballot.

III. Primary Rules

Rule Authority. The primary legislation authorizes the Secretary of State to adopt rules necessary to implementing the new primary.

Rules Filed. After seven work sessions with the County Auditors, our office filed emergency rules with the Code Reviser on July 19, 2004 setting forth statewide standards for implementation of the new primary. Key features of these rules include the following.

- **Ballot Style.** Consistent with the legislation, County Auditors may use either a consolidated ballot or separate ballots.
- **Consolidated Ballot.** If a consolidated ballot is used, the format of the ballot is established.
- **Nonpartisan Candidates.** For counties using separate ballots, nonpartisan candidates will appear on a nonpartisan ballot and on each party’s ballot. Voters will be instructed to vote and return only one ballot.
- **Use of Color.** Use of color on the ballot is made optional with the County Auditors. If color is used, a lot drawing has assigned red to the Democratic Party, green to the Republican Party, and blue to the Libertarian Party.
- **Order of Parties on the Ballot.** Consistent with existing state law pertaining to the general election, the order the parties will appear on the ballot in the primary will be the same as the order the candidates will appear on the general election ballot.
- **No Record Kept of Voter Ballot Choice.** The rules reinforce the statutory requirement that no record be kept of a voter’s ballot choice.

IV. Separate and Consolidated Ballots

Statutory Requirement. The new legislation authorizes County Auditors to use either separate ballots or one consolidated ballot. Our rules reinforce the County Auditor’s authority to select either of these ballot styles.

Separate Ballots. Most County Auditors have decided to use separate ballots. Under this approach, four separate ballots will be developed for the Democratic,

Republican, and Libertarian Parties and one ballot consisting of nonpartisan races only. Nonpartisan races will also appear on the party ballots. Voters will be requested to choose only one ballot and to vote only for the candidates on that ballot.

Consolidated Ballot. Following research and focus group work done by King County, the central Puget Sound counties of King, Snohomish, Pierce, and Kitsap have coordinated efforts to use a consolidated ballot. Chelan and Klickitat Counties are also planning to use a consolidated ballot.

King County Focus Group Findings. To test voter response to consolidated and separate ballots, King County mailed sample ballot formats to 1600 randomly-selected voters and conducted a series of in-person focus groups on a variety of ballot styles. The focus groups were conducted with representative samplings of the electorate and that they included both poll and absentee voters. Key findings of the King County focus groups include the following.

- People followed the instructions and correctly adjusted to the new system for all ballot types.
- More voters indicated support for a single ballot over separate ballots - and more importantly - the rate of correctly-filled out ballots was the same for single and separate ballot designs;
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- Even though many people were not happy about the change, they considered voting too important a right to let it stand in the way of their voting in the primary.

V. Provisional Certification

State Law. State law provides that all vote tallying equipment and software be certified by the Secretary of State's Office.

“Pick a Party” Feature. The new primary law requires that voters on a consolidated ballot must “pick-a-party”. If the voter does not pick-a-party on the ballot, the law specifically provides that votes for partisan candidates will not be counted. In other states with “Montana” style primaries, if a voter does not pick-a-party, but proceeds to vote a straight party ticket, the votes will count. As a result, all election software currently on the market would, contrary to the provisions of the new primary law, count the votes of a Washington voter who does not pick-a-party but proceeds to vote a straight party ticket. Thus, a modification is required for all software processing a consolidated ballot, and the Secretary of State must certify that change.

Provisional Certification. The Secretary of State has filed emergency rules establishing a provisional certification process that will allow the counties and

vendors processing consolidated ballots to make the necessary software change and become certified under state law. Before any provisional certification will be issued, thorough testing of the software will occur to ensure the software achieves the desired result.

VI. Voter Education and Outreach

County Auditor Outreach Programs. We have encouraged each County Auditor in the state to develop voter outreach programs designed to encourage voting and educate about the new primary. You may wish to contact your County Auditor to learn more about local plans.

Print Publication. The Secretary of State has budgeted \$700,000 for a statewide educational mailing on the new primary to 3 million households in Washington. This educational piece will be mailed shortly before absentee votes are issued and will address both consolidated and separate ballots. The messages in the mailings for the primary are clear and simple: (1) voters must vote for candidates in only one party in partisan races and (2) voters will also have the choice of only voting for nonpartisan candidates. The three major parties on the ballot are Democratic, Republican, and Libertarian.

Broadcast Media. The Secretary of State has budgeted \$1 million for a Radio/TV educational campaign on the new primary. Radio and TV ads will run from mid-August to September 14 focusing on the same clear messages of the print publication. Sample radio ads are attached as Exhibit A.

VII. Education and Training

Secretary of State/County Auditor Work Sessions. The Secretary of State Elections Division and the County Auditors have coordinated 7 work sessions in May, June and July on the new primary. These efforts began with a three day conference in Wenatchee in May attended by representatives from all 39 County Auditor offices. This three day session focused exclusively on the new primary and on implementation of the federal Help America Vote Act (HAVA).). Other work sessions devoted exclusively to the new primary followed in all regions of the state.

County Auditor Training. County Auditors will be conducting training sessions for election administrators and poll workers to ensure a smooth and efficient transition to the new Washington primary.

VIII. Help America Vote Act (HAVA)

HAVA Requirements. The new federal law entitled the Help America Vote Act imposes several new requirements on every state, some of which take effect in this election.

HAVA ID Requirement. HAVA requires that all voters in a federal election provide identification as part of the registration process. Approved HAVA ID includes Washington Driver's License, the last four digits of the social security number, or any one of another form of identification including utility bills or a bank statement.

HAVA Requirements for Electronic Voting. HAVA requires that by January 1, 2006, all poll sites have at least one electronic voting machine to assist the disabled to vote in privacy.

HAVA Certification Letter. Governor Locke and Secretary Reed have submitted a joint letter certifying that Washington has met all requirements for federal HAVA funding to Washington.

HAVA/State Funding. Washington has received \$13 million in HAVA funding to implement HAVA requirements in Washington and to improve the election system. We are awaiting dispersal of an additional \$47 million to Washington. These monies will be used for punch card replacement, creating a statewide Voter Registration Database, voter education and outreach, and other federal and state initiatives to improving elections in Washington. The Legislature also appropriated \$2.7 million in matching funds to qualify for these dispersals. Thus, the total federal and state monies being allocated for HAVA implementation in Washington is \$62.7 million.

HAVA Grant Advisory Committee. At legislative direction, our office is in the final stages of establishing a HAVA Grant Advisory Committee to make recommendations on HAVA grants to counties for election programs. The Committee will consist of three County Auditors, the Director of Elections, and a member at large appointed by the Secretary.

Voter Registration Database. A broad coalition of state and local officials are working to create a single uniform statewide Voter Registration Database mandated by HAVA. This system will reside with the Secretary of State and support the needs of all counties. HAVA requires that this system be in place by January 1, 2006.

IX. Primary Election Costs

Estimated Costs. The Secretary of State is currently estimating that the additional costs associated with implementing the new primary will be approximately \$7.6 million. This consists of \$6 million that the Governor has made available to counties for additional costs, and \$1.7 million being spent by

the Secretary of State on education and outreach associated with the new primary.

County Costs. Governor Locke allocated \$6 million for county costs to administer the new primary above and beyond the normal and regular costs associated with the primary. In cooperation with OFM, the Secretary of State has distributed this money to the counties under a cooperative agreement with the Washington Association of County Officials (WACO). Distribution of these monies was based upon county estimates of additional costs for the primary.